IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision : 07.08.2006

First Appeal No. 694 of 2001
(Old No. 615 of 1991)

Smt. Rashmi
W/o Shri Vijay Singh Negi
R/o Manpur, Kotdwar
District Pauri Garhwal …….Defendant/Appellant

Versus

1. Shri Vijay Singh Negi
   S/o Shri Ghan Singh Negi
   R/o Manpur, Kotdwar
   District Pauri Garhwal
   Presently posted as Assistant Teacher
   In L.T. Grade at Shree Guru Ram Rai
   Inter College, Deola-Raukhat
   District-Pauri Garhwal….Plaintiff/Respondent.
2. Sri Kishori Lal
   S/o Shri Ramesh Chandra
   R/o Aom Parar, Kotdwar
   District Pauri Garhwal….Defendant/Respondent.

Ms. Bina Pande, learned counsel for the appellant
Mr. G.S. Negi, learned counsel for the respondent.

A.F.R. (Approved for Reporting)
Not Approved for Reporting

(Initial of Judge)

Date. 07.08.2006

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Mr. G.S. Negi, learned counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 96 of Code of Civil Procedure, 1908, is directed against the judgment and decree dated 01.10.1991, passed by then learned District Judge, Pauri Garhwal, whereby Original Suit No. 51 of 1990, instituted by plaintiff Vijay Singh Negi for divorce against his wife Rashmi Negi, is decreed for divorce under Section 13 of Hindu

Marriage Act, 1955. (In the year 1990 there was no Family Court in Pauri Garhwal).

2) I heard learned counsel for the parties and perused the record.

3) Brief facts of the case are that plaintiffs/respondent Vijay Singh Negi got married to defendant No. 1 Rashmi Negi in October 1972 according to Hindu rites. Out of the wedlock, two sons and one daughter were born to them. Husband and wife, both were in service. Plaintiff Vijay Singh Negi was posted at Paukhal in Guru Ram Rai Inter College, as a teacher, and defendant Rashmi Negi was serving with Kanya Adharik Vidyalaya, Kotdwar. Out of the three children, elder son and daughter were living with their mother (in village Manpur) and younger son was living with plaintiff at Paukhal. In the year 1980, defendant No. 1 fell ill and was under treatment of one Dr. Kar. Defendant No. 2 Kishori Lal who was Compounder to said doctor, used to inject shots, prescribed by the doctor. After sometime, he started going to the house of defendant No. 1 Rashmi Negi to inject the shots. It is alleged by the plaintiff/husband that illicit relations developed between the two i.e. Rashmi Negi and Kishori Lal and Rashmi Negi started living in adultery with Kishori Lal. The divorce petition was filed on the ground of adultery.

4. Defendant No.1 contested the suit and denied the allegations of adultery. It was pleaded in her written statement that her husband treats her with cruelty and wants to remarry and as such the petition under Section 13 of Hindu Marriage Act, 1955 (which is registered as suit) is instituted by him for dissolution of marriage. Defendant No. 2 Kishori Lal filed separate written statement, denying allegations that he had illicit relation with Rashmi Negi.

5) On the basis of the pleadings of the parties, following issues were filed by the trial court:-

1. *Whether the defendant No. 1 was living in adultery with defendant No. 2?*
2. *Whether the plaintiff was treating defendant No. 1 with cruelty?*
3. *To what relief, if any, the petitioner is entitled?*

After recording the evidence and hearing the parties, the trial court found that defendant No. 1 Rashmi Negi was living in adultery with defendant No. 2 Kishori Lal. It further found that plaintiff has not treated his wife with cruelty. On the basis of these findings, the plaintiff's suit (petition under Section 13 of Hindu Marriage Act, 1955) was decreed for dissolution of marriage on 01.10.1991, aggrieved by which, this appeal was preferred by defendant No. 1 Smt. Rashmi Negi.

6. It is argued on behalf of the appellant that the trial court has not appreciated the evidence properly and the

finding of the trial court against the appellant is based on conjectures and surmises. I have gone through the statement of P.W. 1 Vijay Sing (husband), P.W. 2 Shaktibeer Singh (elder son of the couple) and P.W. 3 Jaibeer Singh (younger son of the couple). I have also gone through the statement of D.W. 1 Rashmi Devi (wife), D.W. 2 Rameshwari Devi and D.W. 3 Kishori Lal (defendant No. 2). Had there been mere statement of P.W. 1 Vijay Singh (husband), making allegations against his wife that she is living in adultery with defendant No. 2 Kishori Lal, which is a fact denied by D.W. 1 Rashmi Devi and D.W. 3 Kishori Lal, this Court would not have believed the story narrated by the husband (P.W. 1). But statement made by P.W. 2 Shaktibeer Singh and P.W. 3 Jaibeer Singh (both sons of Vijay Singh Negi and Rashmi Negi) has made all the difference. It is not denied that Shaktibeer Singh (P.W.2) was living with her mother (Rashmi Negi). He is a student of B.Sc. He had stated in clear terms that his mother has illicit relations with Kishori Lal. This witness has stated that Kishori Lal used to come in their house. P.W. 2 Shaktibeer Singh, narrating the incident of adultery, has stated that once Rashmi Negi in a pretext to ease out herself went to toilet. The witness states that he saw Kishori Lal coming out from second door of the bathroom. This witness has further stated that he and his sister were so much fed up with the conduct of their mother that the two started cooking their food sepearately from their mother though they were living with her. At the end of his examination in

chief, witness states that not he hates his mother. And he and his sister are not ready to accept the food cooked by their mother. P.W. 3 Jaibeer Singh (younger son of plaintiff and defendant No. 1) also corroborates the statement of his elder brother on the fact that their mother was living in adultery with Kishori Lal. This witness Jaibeer Singh is aged 14 years. In the cross examination, P.W. 3 Jaibeer Singh has stated that he himself saw Kishori Lal untying knot of PETTICOAT of his mother. This witness further states that his mother Rashmi Negi is living in adultery with Kishori Lal for two-three years.

7. In the opinion of this Court, no son would like to make such allegation against his own mother, particularly who is living with her. In the present case, not one but the two sons have stated the same fact. In the circumstances, trial court has committed no error of fact or that of law in believing their testimony. After going through the evidence on record, this Court is in agreement with the finding of the trial court that plaintiff (husband) has been successful in proving that his wife was living in adultery with Kishori Lal.

8. Learned counsel for the appellant Rashmi Negi, contended that Vijay Singh has remarried in violation of the stay order, passed in the appeal. In the opinion of this Court, merely on the basis of said fact, the impugned decree cannot be set aside.

9. For the reasons as discussed above, this Court finds no error of law or that of fact, committed by the trial court in passing decree of dissolution of marriage between plaintiff/respondent Vijay Singh Negi and appellant/defendant No. 1 Rashmi Negi. Accordingly the appeal is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 07.08.2006.
Sweta